

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New)
Rules I through III pertaining to)
claiming the unlocking state lands tax)
credit)

NOTICE OF PUBLIC HEARING ON
PROPOSED ADOPTION

TO: All Concerned Persons

1. On September 29, 2014, at 11 a.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed adoption of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on September 15, 2014. Please contact Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov.

3. The rules as proposed to be adopted provide as follows:

NEW RULE I DEFINITIONS The following definitions apply to terms used in this subchapter:

(1) "Agreement" means the contract for participation entered into between the Department of Fish, Wildlife and Parks (FWP) and the landowner(s) for purposes of guaranteeing access to state land under the unlocking state lands program.

(2) "Tax certification number" means the number issued by FWP certifying that the landowner is providing qualified access to state land under the unlocking state lands program provided for in 87-1-294, MCA.

AUTH: 15-1-201, MCA

IMP: 15-30-2380, 87-1-294, MCA

REASONABLE NECESSITY: The department proposes adopting New Rule I to implement House Bill (HB) 444, L. 2013, which established the unlocking state lands program. The proposed new rule will define terms used in a proposed new subchapter in ARM Title 42, which will house the department's rules regarding the process for claiming the unlocking state lands tax credit.

NEW RULE II CLAIMING THE UNLOCKING STATE LANDS TAX CREDIT

(1) To claim the unlocking state lands tax credit, a taxpayer shall file a Montana tax return (Form 2 for individuals, Form FID-3 for estates and trusts, or

Form CIT for C corporations), whether or not they are otherwise required to file a tax return for the year the credit is being claimed.

(2) A taxpayer who files a tax return on a calendar year basis shall claim the credit for the tax year in which the agreement applied.

(3) A taxpayer who files a tax return on a fiscal year basis shall claim the credit for the tax year in which the agreement was certified by FWP.

(4) The taxpayer shall include copies of all tax certification numbers, agreements, and supporting documents when filing their return. If the return is filed electronically using software that does not support attachments, the taxpayer shall retain the information and provide it to the department upon request.

(5) When reviewing a claim for the credit, the department may request additional information to determine a taxpayer's eligibility for the allocation of the credit being claimed. This information may include, but is not limited to:

(a) documentation establishing ownership and ownership percentage of the parcel(s);

(b) a Montana Schedule K-1 issued by a partnership, S corporation, or fiduciary indicating the partner, shareholder, or beneficiary's share of the credit; or

(c) a return filed by a partnership, S corporation, or fiduciary including information showing the owners of the entity.

AUTH: 15-1-201, MCA

IMP: 15-30-2380, 87-1-294, MCA

REASONABLE NECESSITY: The department proposes adopting New Rule II to implement HB 444, L. 2013, which established the unlocking state lands program. The proposed new rule will provide guidance for taxpayers claiming the associated unlocking state lands tax credit.

NEW RULE III ALLOCATION OF CREDIT FOR ACCESS THROUGH LAND WITH MULTIPLE OWNERS AND LAND OWNED BY PASS-THROUGH ENTITIES

(1) For purposes of calculating the tax credit permitted by the unlocking state lands program, parcels held wholly or in part by an entity disregarded for tax purposes shall be treated as owned by the entity's owner or owners. For example, a parcel held in the name of a single-member limited liability company that is disregarded for tax purposes shall be considered as owned by the sole member, or sole member and spouse, if applicable.

(2) Unless substantiation of a different ownership split is provided by all landowners, the credit for access granted through land having multiple owners, such as two individuals or an individual and an unrelated corporation, shall be divided equally among the landowners.

(3) The credit for access through land owned by an S corporation must be allocated to its shareholders in the same manner the S corporation uses to allocate its items of income or loss to its owners for Montana income tax purposes.

(4) A partnership that is entitled to the credit may allocate the total credit in a manner that is mutually agreeable to its partners. Evidence of such an allocation may include, but is not limited to, Montana Schedule(s) K-1, terms of the partnership agreement that are specific to this credit or a separate agreement between the

partners regarding the allocation of this credit. If evidence of the allocation is not provided to the department upon request, or if the information provided is deficient, the total credit must be allocated to the partners in the same manner the partnership allocated its income and losses to its owners for Montana income tax purposes.

AUTH: 15-1-201, MCA

IMP: 15-30-2380, 87-1-294, MCA

REASONABLE NECESSITY: The department proposes adopting New Rule III to implement HB 444, L. 2013, which established the unlocking state lands program. The proposed new rule will provide guidance for taxpayers claiming the associated unlocking state lands credit. The proposed new rule also outlines how the credit will be allocated in various ownership combinations, including when parcels have multiple owners or owners that are pass-through entities such as partnerships or subchapter S corporations.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov and must be received no later than October 10, 2014.

5. Laurie Logan, Department of Revenue, Director's Office, has been designated to preside over and conduct this hearing.

6. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

7. An electronic copy of this notice is available on the department's web site at revenue.mt.gov. Select the Administrative Rules link under the Other Resources section located in the body of the homepage, and open the Proposal Notices section within. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary sponsor of House Bill 444, L. 2013, Representative Tom Jacobson, was contacted by regular mail on February 4, 2014, and subsequently notified on August 5, 2014.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State August 25, 2014.